

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case No. 20-CV-954-WO-JLW**

FARHAD AZIMA,

Plaintiff,

v.

NICHOLAS DEL ROSSO and VITAL
MANAGEMENT SERVICES, INC.,

Defendants.

**PLAINTIFF’S REPORT ON
CIRCUMSTANCES OF MEET
AND CONFER PRIOR TO
PLAINTIFF’S SEPTEMBER 6,
2023, NOTICE TO THE COURT
AND PARTIES**

FACTUAL STATEMENT

Plaintiff Farhad Azima, through counsel, respectfully submits this report regarding the meet and confer communications that occurred in advance of Plaintiff’s filing of the September 6, 2023, Notice to the Court and Parties (“Notice”) (ECF No. 284).

1. On August 8, 2023, Plaintiff received a production of more than 4,000 pages of bank records in response to a subpoena served on First National Bank. Judge Webster ordered First National Bank to comply with this subpoena in his July 25, 2023 Order. *See* ECF No. 248.
2. Between August 8, 2023, and approximately August 25, 2023, counsel for Plaintiff reviewed and analyzed the documents and identified banking transactions between Defendants, counsel for Defendants, and certain third-party co-conspirators alleged to have committed hacking

and misappropriation offenses against Plaintiff. Plaintiff alleges that analysis of these financial records shows the existence of a present conflict between counsel for Defendants and their clients based on the dual roles of counsel for Defendants as advocates and as fact witnesses to the alleged misconduct, which potentially violates the North Carolina Rules of Professional Conducts. *See* RPC 3.7(a); 1.7(a). The alleged conflict requires additional discovery, including documents—and likely depositions—that must be pursued from counsel for Defendants. After analyzing the financial records, counsel for Plaintiff researched the relevant legal issues and concluded that there was a basis for a motion to disqualify counsel for Defendants resulting from the conflict. Counsel for Plaintiff then began drafting a motion to disqualify counsel for Defendants based on the evidence of a conflict shown in the financial records.

3. On August 31, 2023, the Court issued a stay in this case and ordered the parties to meet and confer regarding outstanding discovery disputes. *See* ECF No. 282.
4. On Friday, September 1, 2023, Christopher Jones, counsel for Plaintiff, sent counsel for Defendants an email notifying them of the potential conflict, communicating their belief that the issue should be brought to the Court's attention prior to the scheduled September 29, 2023, status

conference, and requesting to meet and confer on the issue on Tuesday, September 5, 2023 (the first business day after Labor Day). Counsel for Plaintiff also informed counsel for Defendants that, prior to the call, they would provide a letter setting forth the factual basis for the motion.

5. On September 1, 2023, Samuel Rosenthal, counsel for Defendants, confirmed receipt of the email communication and requested that counsel for Plaintiff provide Plaintiff's draft brief on the motion to disqualify to counsel for Defendants. Counsel for Plaintiff declined this request, concluding that it was beyond the scope of a meet and confer conference and because the brief was not at that time finalized.
6. On September 5, 2023, at 9:07 a.m., Samuel Rosenthal, counsel for Defendants, sent a letter to counsel for Plaintiff requesting to review Plaintiff's draft brief of the motion to disqualify before meeting and conferring on that issue and other topics.
7. On September 5, 2023, at 11:26 a.m., Lauren Briggerman, counsel for Plaintiff, emailed six of the attorneys representing Defendants in this matter (Brandon Neuman, Esq., Samuel Rosenthal, Esq., John Branch, Esq., Jeff Kelly, Esq., Matthew Gorga, Esq., and Nathaniel Pencook, Esq.) a three-page, single-spaced letter describing the conflict issue, including cites to relevant documents and a discussion of the relevant

the North Carolina Rules of Professional Conduct, and reiterated counsel for Plaintiff's request for a meet and confer that day.

8. On September 5, 2023, at 1:44 p.m., Samuel Rosenthal, counsel for Defendants, sent counsel for Plaintiff an email again requesting a draft of the disqualification motion prior to agreeing to meet and confer.
9. On September 5, 2023, at 3:59 p.m., Lauren Briggerman emailed the six attorneys referred to in paragraph 7 above, stating that, if counsel for Plaintiff did not hear back from counsel for Defendants that day in response to their multiple requests for times to meet and confer, counsel for Plaintiff would assume that counsel for Defendants did not want to meet and confer. At 5:10 p.m. that day, Samuel Rosenthal responded on behalf of counsel for Defendants stating a willingness to meet and confer on the conflict issue in conjunction with other issues but declining to offer times to meet and confer.
10. On September 6, 2023, at 12:06 p.m., Lauren Briggerman again emailed counsel for Defendants requesting to meet and confer regarding Plaintiff's intent to file a notice with the Court of the conflict issue, proposing 3:00 p.m. as a time to meet and confer. At 2:05 p.m., Samuel Rosenthal responded to the email on behalf of counsel for Defendants agreeing to meet and confer at 3:00 p.m.

11. On September 6, 2023, at 3:00 p.m., the parties met and conferred by Zoom. Present for Plaintiffs were Kirby Behre and Lauren Briggerman of Miller & Chevalier and Christopher Jones of Womble Bond Dickinson. Present for Defendants were Samuel Rosenthal, John Branch, and Matthew Gorga of Nelson Mullins Riley & Scarborough LLP. Counsel for Plaintiff explained that their September 5, 2023, letter outlined the basis for the conflict concern and reiterated their belief that notice needed to be provided to the Court prior to the September 29, 2023, hearing. Plaintiff's counsel stated that they intended to file a notice with the Court requesting an opportunity to raise the dispute in the context of the Court-imposed stay.
12. During the call, counsel for Defendants again requested that counsel for Plaintiff send their draft brief for review, and counsel for Plaintiff again declined this request. Counsel for Defendants did not address any of the specific issues raised in the letter from counsel for Plaintiff. Counsel for Defendants did not suggest the existence of alternative or additional evidence related to the conflict issue or speak further about the nature of the transactions that were the central focus of Plaintiff's concerns. Counsel for Defendants did communicate that they did not believe that a conflict exists and that they did not believe that the issue needed to be raised in advance of the September 29, 2023, hearing. Notably, counsel

for Defendants did not specify a request for more time to assess the issue or for additional meet and confer conferences after further assessing the issue.

13. When it became clear that no further progress could be made in connection with the disqualification issue, counsel for Plaintiff ended the call.
14. Counsel for Plaintiff filed their Notice with the Court later that day. *See* ECF No. 284.

This, the 12th day of September, 2023.

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/s/ Ripley Rand

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send electronic notification of this Notice to the following attorneys:

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This, the 12th day of September, 2023.

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